
THE PENAL SYSTEM

Discuss the aims of sentencing and consider other factors the criminal courts will use to reach an appropriate sentence.

In order to discuss the aims and influencing factors behind sentencing it is first necessary to establish what is meant by the term, sentencing. Sentencing refers to the judgement of a court stating the punishment to be imposed on a defendant who has pleaded guilty to a crime or been found guilty by the jury.

Whilst the Magistrate court has fixed maximum powers, Crown Court judges do not and as such have wide sentencing discretion, (with the exception of Murder and some second offences which have mandatory statutory sentencing). Before turning to the influences on the Judges when it comes to sentencing a defendant, it is first necessary to establish the different intentions or outcomes a judge may wish to achieve by imposing for instance a community punishment order, a custodial sentence or a fine.

There are a number of different theories of punishment, and different aims and purposes underlying the legal provisions for sentencing under the English Legal System. Broadly speaking however the aims of punishment fall into six main categories:

- Retribution
- Denunciation
- Incapacitation
- Deterrence
- Rehabilitation
- Reparation

It is clear without even an in depth look that each of these aims that there are inherent conflicts, as it is hard to see how a sentence aimed at rehabilitation is able to act as a deterrent. Each aim will now be looked at in turn.

The concept of retribution implies that a criminal merits his punishment because he has done something morally or socially evil. Further that the punishment should be related to the harm done by the crime, opposed to the moral guilt of the criminal. The idea of an eye for an eye, or a life for a life, it is this interpretation of retribution which is used to justify capital punishment. Critically this form of punishment does not seek to alter the future behaviour of either the criminal or other citizens, it merely seeks to discipline the criminal for the individual crime(s) committed. Retribution is interpreted today, under the English Legal system as the concepts of correct punishment and set tariffs; as instructed in for instance *R v Billam (1986)*, which set out sentence tariffs for rape. This idea has been emphasised again in the Crime and Disorder Act 1998 which established the Sentencing Advisory Panel with the power to propose to the Court of Appeal (criminal) that sentencing guidelines should be made or revised for certain crimes. However one of the most powerful arguments

against such minimum tariff sentences is that it does not allow for any mitigating, influencing or situational factors to be considered and could in some instances prove to be unfair and extreme.

Denunciation can be seen to go hand in hand with the idea of retribution, in fact a government white paper published in 1990 stated, “the first object for all sentences is the denunciation of and retribution for crime”. It is an extension of the idea of punishment because the criminal has done something morally and socially wrong. Judges when pronouncing a sentence with the aim of denunciation are expressing the disapproval and un-acceptance of society. In this way punishment and certain sentences are used by Judges to enforce and maintain the limits of tolerability in society. These will of course alter over time and it is the role of the Judges to adapt and change as the ‘morals’ of society alter and change. This idea of societies disapproval formed the basis of the influential Criminal Justice Act 1991.

Whilst maintaining moral boundaries can be seen to be one aim, of equal importance is the protection of society in more physical terms. This can take many different forms from electronic tagging, to a driving ban, to a long prison sentence for the most serious crimes (Criminal Courts (sentencing) Act (s79)). All however have the same aim, to prevent the criminal from re-offending.

Whilst the aims of retribution, denunciation and incapacitation are concerned primarily with punishment of an individual and protection from an individual, the idea of deterrence is it may be argued more general. The theory of deterrence is sound; the punishment is aimed at deterring the criminal from repeating his offence or deterring other from committing a similar crime. In this way a deterrent sentence may be aimed at both an individual and society more generally. Reality however has proven that certainly prison does not appear to deter either, the convicted or the criminally intent. Glaringly shown by the statistic that 55% of adult prisoner re-offend within two years. More generally the effect is even less, it is extremely hard to make an example of a criminal (R v Whitton 1985), and most would argue that, this is only right in order to maintain individual civil liberties and human rights. It also seriously conflicts with the ideas of retribution as it can lead to excessively harsh sentences. However the lack deterrent by example has a detrimental affect on the effect of deterrent punishment. The conflict is between what is the right punishment for the individual and what punishment is needed to protect society from other committing a similar offence. Within English Law however, the right ultimately rests where it should, with the individual.

This emphasise on the individual can be seen no more clearly than in the aim of rehabilitation. The idea that sentences should be designed to assist in the rehabilitation of the criminal, attempting in some way to address not only the crime, but also the causes of crime. For instance a great many crimes are committed by those addicted to or under the influence of drugs. If you help to treat the addiction you can hopefully prevent further criminal activity by that person. This idea of rehabilitation can be seen to be increasingly important

with regard to young offenders. This is an important shift and development in sentencing, as it offers hope not only for the individuals concerned, but also for society in general.

The final aim of sentencing that of Reparation, address the needs of the victims of crime. Whilst the other aims have concerned society or the criminal as an individual, reparation aims to compensate the sufferers of crime. The idea is that compensation is paid and that this would eradicate the consequence of the crime, an idea, which has its foundation in Anglo-Saxon law. It is necessary for all English courts to consider compensation and if they do not make a compensation order the court is obliged to give a reason (Powers of the Criminal Courts (Sentencing) Act 2000 (s130)). This idea is seen to be the main impetus behind such punishments as Community Punishment Orders, aimed and repaying society as a whole opposed to an individual victim(s).

Consequently retribution, denunciation, incapacitation, deterrence, rehabilitation and reparation, can be seen to be the over riding objectives and aims of punishment. Obviously a sentence can and does frequently have more than one aim, however when deciding the severity opposed to aim a justice will consider many other factors.

One of the most important is the seriousness of the crime and whether the crime was in any way premeditated or was it opportunistic, the later carrying a heavier sentence. The Court will also consider the individual's plea (an early guilt plea can reduce a sentence by a third), their background, any previous convictions, their financial situation, and their mental health. This is done through a series of reports usually prepared by the Probation Service, these pre sentence report, outline not only the individuals background but also the suitability of different forms of sentence, for instance community based opposed to custodial. (Where a serious offence has been committed where there is a mandatory sentence, for example murder these reports and irrelevant.) When dealing with a youth, the Court may additional also consider school reports and job prospects. Where race is involved the Courts are under the Crime and Disorder Act 1998 (s82) allowed to take racial aggravation take into account when determining sentence. This is by no means a comprehensive list, however it does demonstrate the variety of factors, which must be considered before a sentence is give, a hard-task. One, which at every stage must balance the aims of the punishment, with the influences of the individual, and society's need for a human, fair system of criminal justice.